



[6705-01-P]

FARM CREDIT ADMINISTRATION

FCA-PS-81 [NV 11-25]

Ethics, Independence, Arm's-Length Role, Ex Parte  
Communications and Open Government

AGENCY: Farm Credit Administration.

ACTION: Policy statement.

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SUMMARY: The Farm Credit Administration (FCA or Agency) Board was created by Congress to serve the public interest in ensuring a source of affordable and dependable credit to agriculture and rural America. In fulfilling this obligation, the FCA Board should ensure that the Agency has conducted a thorough, independent and objective analysis of every matter brought before it for action, and that varying viewpoints and interests are considered by the FCA Board prior to making any substantive decision. As reflected by its current policies, the FCA Board believes that it must place emphasis on the independence and objectivity of itself and all FCA employees in dealing with representatives of the Farm Credit System (System) and the public. The FCA Board also is committed to the ethics principles and laws governing all Executive Branch employees and to the Agency's strong ethics program.

EFFECTIVE DATE: November 7, 2011.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: The following policy reaffirms the Board's commitment to the ethics laws and regulations, its avoidance of ex parte communications in its judicial and rulemaking roles, its commitment to open Government and its role as an independent, arm's length safety and soundness regulator:

THE FCA BOARD HEREBY ADOPTS THE FOLLOWING POLICY STATEMENT:

Ethics, Independence, Arm's-Length Role, Ex Parte  
Communications and Open Government

FCA-PS-81 [NV 11-25]

Effective Date: 7-NOV-11.

Effect on Previous Actions: None.

Source of Authority: Sections 5.8, 5.9, 5.10, and 5.11 of the Farm Credit Act of 1971, as amended.

Ethics. The body of ethics law, rules and policies are designed to ensure that every citizen can have complete confidence in the integrity of the Government. FCA, as an agency in the executive branch, is subject to the Federal criminal conflict of interest laws and Office of Government Ethics (OGE) regulations and oversight, including the 14

General Principles of Ethical Conduct and the Uniform Standards of Ethical Conduct (Code) (5 CFR Part 2635), the restrictions on certain noncareer employees (5 CFR Part 2636), the regulations on ethics program responsibilities (5 CFR Part 2638), the financial disclosure regulations (5 CFR Part 2634), the regulations on acts affecting a personal financial interest (5 C FR Part 2640), and the post-employment restrictions (5 CFR Part 2641). FCA also has issued supplemental ethics rules with the concurrence of OGE (5 CFR Part 4101). In addition, the FCA Board Members, as Presidential Appointees with Senate confirmation (PAS), are subject to any further applicable ethics restrictions that may be imposed by the President of the United States.

Pursuant to the body of ethics laws cited above, the FCA Board will continue to hold itself to the highest standards of ethical conduct in recognition that its commitment and adherence to the Agency ethics program sets the standard for the commitment and conduct of Agency staff. Board Members should avoid actions that could create the impression that they can be improperly influenced. They should also avoid actions that could create the appearance of violating the law, the ethical standards set forth in the Federal and FCA ethical

standards of conduct, or other applicable guidance. In decision making, a Board Member should be guided by the integrity of the Farm Credit Act, as amended, and also by the knowledge that he/she is acting on behalf of the public.

Independence. The FCA has been established as an independent Agency to administer laws enacted by the Congress. Its PAS Board Members serve fixed terms as provided by law. Because of its independent status, Board Members should not let their official decisions be swayed by partisan demands. Although the Agency works cooperatively with Congress and the White House, Board Members and employees must remain mindful of their duty to make independent determinations on matters being considered by the Agency. The decisions made by a Board Member will reflect objective understanding and knowledge of the complexity of the matter under consideration.

Arm's-Length Role. The FCA Board Members and Agency staff are committed to maintaining an arm's-length relationship with the System. This means Agency decisions must be independent of any undue influence, favoritism, or special access so that all parties coming before the Agency stand on an equal footing. The Board Members, as final arbiters of Agency actions affecting the System, as well as

all Agency employees who have decision-making authority affecting System institutions and related entities, must be especially mindful to conduct themselves in a fair and impartial manner, avoiding any actions that create an appearance of a loss of impartiality. This is especially important in light of FCA's examination, rulemaking and adjudicatory functions. While open and informative communications with regulated parties is essential for an effective regulator, the FCA Board and staff will strive to maintain an appropriate balance in its communications with the System, keeping in mind the totality of the circumstances - including the content, timing and setting of such communications - before engaging with the System. FCA Board and staff will consult with the ethics staff whenever in doubt about the propriety of such communications.

Determination of Appearance of Loss of Impartiality.

Under the Code's impartiality rule, an appearance concern is judged on the basis of the individual Board Member or employee determining that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his or her impartiality in the matter. The rule also permits the DAEO or ethics designee to make an independent determination of

whether or not a potential appearance problem would cause a reasonable person with knowledge of the relevant facts to question a Board Member's or employee's impartiality in a matter.

Ex Parte Communications. In its judicial functions, the Board Members and staff avoid all discussions with persons outside the Agency and its staff as set forth in Agency regulations at 12 C.F.R. Part 622.7(j). Specifically, this regulatory provision, in part, prohibits any FCA Board Member or employee who is or may reasonably be expected to be involved in the decisional process from making or knowingly cause to be made an ex parte communication relevant to the merits of the proceeding to any person. In its rulemaking functions, the Board Members and staff also adhere to the ex parte restrictions set forth in Board Policy 37, which governs substantive oral communications with the public during the rulemaking process.

Open Government. The Agency is committed to conducting its business in the sunshine and on the public record as required by law. We also adopt the following core values of an open and accountable FCA as outlined in the President's Open Government memorandum issued in January 2009:

- Transparency: FCA should provide citizens with information about what it is doing to promote knowledge, accessibility and accountability.
- Participation: FCA should actively solicit expertise from the public and from outside Washington so that it makes policies with the benefit of the best information.
- Collaboration: FCA officials should work together with other Government officials and with citizens as part of doing its job of solving national problems.

DATED THIS 7<sup>TH</sup> DAY OF NOVEMBER, 2011

BY ORDER OF THE BOARD

Date: \_\_November 10, 2011\_\_

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Dale L. Aultman,  
Secretary,  
Farm Credit Administration Board.

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